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HONEYWELL INTERNATIONAL INC.
PATENT SERVICES
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN, NJ 07962-2245

EXAMINER	
HOEY, ALISSA L	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/695,404
Filing Date: October 28, 2003
Appellant(s): GRILLIOT ET AL.

Jeffery N. Fairchild
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/30/09 appealing from the Office action mailed 01/27/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows: Claims 1-8 are rejected and on appeal.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,601,066	Campbell	07-1986

Eastbay Lined Windpant; Eastbay Catalog, page 19 (NPL scanned 08/22/08)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell (US 4,601,066).

Campbell teaches the following:

A pair of protective pants (12) having an upper portion which when worn covers a wearers torso (see figures 1, 2, 5 and 6), between the wearer's waist and the wearers legs (see figures 1, 2, 5 and 6), the pair of protective pants having two leg portions (48a, 48b), each of which when worn covers one of the wearers legs (figures 1,2, 5 and 6), wherein each leg portion has an upper region which extends downwardly from the upper portion (48a, 48b), and a lower region (28, 29) which extends upwardly from a

lower end of said leg portion toward the upper region and which terminates not higher than where said leg portion when worn covers the wearers knee (figures 1,2, 5 and 6), wherein the lower region has a puncture- resistant layer (binding, reinforced edges: 55, 57) made from a cloth fabric (see column 4, lines 7-17), extends upwardly from the lower end of said leg portion (figures 1, 2, 5 and 6), and surrounds the lower end of said leg portion and which is resistant to puncture by snakes or by thorny or spiky plants, wherein the upper region of each leg portion (48a, 48b) has an outer layer of abrasion-resistant material is less resistant to punctures than the puncture-resistant cloth fabric (55, 57: column 4, lines 7-17).

2. The pair of protective pants of claim 1 wherein the upper portion also has the outer layer of abrasion-resistant material (48a, 48b: all material is abrasion-resistant to a degree).

5. A pair of protective pants having an upper portion which when worn covers a wearer's torso between the wearer's waist and the wearer's legs, the pair of protective pants having two leg portions (48a, 48b), each of which when worn covers one of the wearer's legs (figures 5 and 6), each of the leg portions having an upper region (upper leg portions: 48a, 48b) which extends downwardly from the upper portion, and a lower region (28, 29, 48a, 48b) which extends upwardly from a lower end of the leg portion toward the upper region and which terminates not higher than where the leg portion covers the wearer's knee when worn (figures 1,2, 5 and 6), each of the upper and lower regions having an outer layer of material (55, 57, 58a, 58b, 59a, 48a, 48b), and wherein the material of the outer layers of the lower regions (55, 57, specifically the Velcro

fasteners 59a, 59b, 58a, 58b) has a greater resistance to punctures than the material of the outer layers of the upper regions (identifiers 48a, 48b).

6. The pair of protective pants of claim 5 wherein the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material (48a, 48b: all material is abrasion-resistant to a degree).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Eastbay Lined Windpants (see catalog page 19).

Campbell teaches a sports garment with greater puncture-resistant lower leg portions than upper leg portions. However, Campbell fails to teach the pants having one or more inner layers.

In regard to claims 3 and 7, Eastbay teaches a sports pant wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers (see description and picture of Eastbay Lined Windpants: page 19).

In regard to claims 4 and 8, Campbell teaches the upper portion and the upper

regions of the leg portions have an outer layer of abrasion-resistant material (48a, 48b). Eastbay teaches wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers, and wherein only the lower region of each leg portion has the layer of puncture-resistant material (see description and picture of Eastbay Lined Windpants: page 19).

It would have been obvious to have provided the sports pants of Campbell having reinforced lower leg portions with the lined sports pant of Eastbay, since the sports pants of Campbell provided with a lining would provide for a pants garment that keeps the wearer warmer and more comfortable due to the dual layer construction.

(10) Response to Argument

I) In regard to claim 1, Appellant argues that Campbell fails to teach a puncture-resistant layer made of cloth fabric that is resistant to snakes, or thorny or spiky plants.

Examiner disagrees, since Campbell teaches a puncture resistant layer (55, 57) made from a cloth fabric (55, 57) that is puncture resistant (all fabrics are puncture-resistant to a degree). The garment fabric (55, 57) of Campbell would be puncture-resistant to a snake slithering through the cloth layer, there is no claim limitation detailing that the resistance to snakes is snake bites/teeth. Further, the fabric material (55, 57) of Campbell would be puncture-resistant to plants having spiky leafs, therefore being resistant to spiky plants. The claim requires that the cloth layer only has to be resistant to one of snakes, thorny plants or spiky plants. The cloth layer of Campbell is

the leg warmers (28, 29), which includes the binding layer (55), along with the reinforced edges (57). The binding layer (55) and the reinforced edges (57) create a double layer construction that is defined as the cloth layer of Appellant's claims. The binding layer (55) can be made from any standard garment material, including soft material warmers (see page 4, lines 24-26), which would include fleece, cotton, jersey fabric, etc. The reinforced edges (57) can be made from the same material of the bindings overlapped at the edges, or another type of material attached to the edges on top of the binding layer (see figures 1, 2, 5 and 6). The bindings (55) and the reinforced edges (57) no matter what material they are made of, would create a double layer with an attachment means (stitching, adhesion) that would be more resistant to punctures than a single layer of standard garment material.

II) In regard to claim 1, Appellant argues that Campbell fails to teach upper leg portions that are less resistant to punctures than the puncture resistant cloth layer of the lower leg portions.

The upper leg portions (48a, 48b) are made from any standard garment material used to make athletic tight garments, which would include cotton, spandex, nylon, jersey fabric, etc. The lower leg portions are made from leg warmers (29, 30). The leg warmers have a binding layer (55) and reinforced edges (57). The binding layer (55) can be made from any standard garment material, including soft material warmers (see page 4, lines 24-26), which would include fleece, cotton, jersey fabric, etc. The reinforced edges (57) can be made from the same material of the bindings overlapped

at the edges, or another type of material attached to the edges on top of the binding layer to assist in maintaining the bindings in a wound state (see figures 1, 2, 5 and 6: column 4, lines 14-17). The bindings (55) and the reinforced edges (57) no matter what material they are made of would create a double layer with an attachment means (stitching, adhesion) that would be more resistant to punctures than a single layer of standard garment material of the upper leg portions.

III) In regard to claim 5, Appellant argues that Campbell fails to teach the material of the outer layer of the lower regions having a greater resistance to punctures than the material of the outer layer of the upper regions.

Examiner notes that the claim does not provide the limitation that the outer layer of the upper regions has less resistance to punctures than the outer layer of the lower regions. What is claimed, is "...., each of the upper and lower regions having an outer layer of material, wherein the material of the outer layers of the lower regions has a greater resistance to punctures than the material of the outer layers of the upper regions.". This limitation is not limited to one outer layer, the lower outer layers combined can be less resistant to punctures than the upper outer layers. The lower outer layers of Campbell consist of bindings (55), reinforced edges (57), Velcro fasteners (58a, 58b, 59a, 59b) and the lower leg portions (48a, 48b). The triple layer of the lower leg portions (48a, 48b) with the binding layer (55) in addition to the Velcro fasteners (58a, 58b, 59a, 59b) or the reinforced edges (57) would have greater resistance than the single layer of the upper leg portions (48a, 48b).

Further, Examiner notes that Campbell can define the Velcro fasteners (58, 58b, 59a, 59b) as the outer layer of material of the lower regions having a greater resistance to punctures than the material of the outer layer of the upper regions. The Velcro fasteners (58b, 59b) are on the outer layer of the lower leg portions (28, 29) and would be more resistance to punctures than the upper material portions made out of a layer of cotton, spandex, nylon or jersey fabric (48a, 48b).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alissa L. Hoey/

Primary Examiner, Art Unit 3765

Conferees:

/GARY L. WELCH/

Supervisory Patent Examiner, Art Unit 3765

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782